

DAVID O. BURLEIGH.

JANUARY 22, 1897.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FENTON, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany S. 2384.]

The Committee on Military Affairs, to whom was referred the bill (S. 2384) for the relief of David O. Burleigh, have had the same under consideration, and recommend its passage, as amended.

The facts in the case having been clearly set forth in Senate Report No. 962 that report has been adopted by your committee.

[Senate Report No. 962, Fifty-fourth Congress, first session.]

The Committee on Military Affairs, to whom was referred the bill (S. 2384) for the relief of David O. Burleigh, have had the same under consideration and submit the following report:

Captain Burleigh was cashiered for a violation of the fifty-second article of war by misbehavior before the enemy. This is a serious charge, and if borne out by proof to the fullest extent and excused by no mitigating circumstances the committee would not consider the bill favorably. But it seems that the night of the alleged misconduct was the third night which had been passed by Burleigh and his men on picket or other active duty without sleep; that he was on the most exposed part of the line, and at about 11 o'clock at night a heavy artillery and infantry fire was opened on them and both officers and men were badly demoralized for a short time, but within a half hour the whole line was reestablished.

Capt. William Badger, of the same regiment, was the senior officer and in command of the line and was tried and dismissed at the same time. He brought his case before Judge-Advocate-General Holt, who made a full examination of it, and his report is printed herewith, and on the strength of that report President Lincoln removed his disability and rescinded the forfeiture of his pay and allowances, and in a few months afterwards Captain Badger was appointed colonel of the regiment, and later was appointed to the Regular Army, and is now on the retired list. Captain Badger's statement of the affair and his exoneration of Captain Burleigh is herewith submitted. He says in speaking of Captain Burleigh:

"He obeyed my orders and caused others to do so as well as he could and ought not to have been tried more than all officers under my command."

He further states that had Captain Burleigh been able to bear the expense of going to Washington when he (Captain Badger) went he would doubtless have been relieved also. There is also appended a letter from the Secretary of War (Robert Lincoln) in 1883.

In view of the circumstances the committee recommend that the bill do pass.

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
Washington, D. C., August 27, 1864.

To his Excellency A. LINCOLN,
President of the United States:

In the case of Capt. William Badger, Fourth New Hampshire Volunteers, referred to me for report, under your indorsement of the 24th instant, I have the honor to submit as follows:

This officer was in June last sentenced by court-martial to be cashiered, and to a

forfeiture of all pay and allowances, for the offense of "misbehavior before the enemy." The record of his trial discloses the following facts:

On the night of the 22d May last Captain Badger, as senior officer, was in command of a picket line in front of our works at Bermuda Landing, consisting of about 250 men of his regiment, covering the front of General Ames's division. It is testified that this number of men was insufficient for the purposes of a good picket line, or was made barely sufficient by placing the ordinary reserve upon the posts as sentinels.

It is abundantly shown that this was the third night which had been passed by these men on picket or other active duty and without sleep, and that they were so weary and worn out that it was difficult for their officers to keep them awake. The officers themselves were, if possible, even more fatigued. The accused and most of the others had been three or four nights on duty. The line had been established with some difficulty in the darkness of the night, and the accused, after issuing orders in regard to the sentinels and instructing his officers to visit their respective parts of the line at certain regular intervals, had lain down to rest with some of the officers, not then required by him to be awake. About 11 o'clock a very severe and rapid artillery and infantry fire suddenly commenced on the part of the enemy from their intrenchments in front. One officer testifies that this firing (which was mostly of grape and spherical case) was, for the time, one of the most violent that he had ever witnessed; that the shot from our own guns which replied to the enemy fell short and crashed among the trees of the wood in which a portion of the line was posted; and that the effect of the whole was to produce unusual consternation among the men, although none of them appear to have been wounded.

At the commencement of this fire the accused and the other officers immediately came upon the line, which was becoming broken, and were rallying their men and stopping those who were running to the rear. Presently, however, Captain Burleigh, the officer who had charge of the right and most exposed portion of the line, came up and informed the accused that the right was driven in, whereupon the latter ordered the whole line to fall back. The command was thus withdrawn a distance of some 500 yards to a line of old rifle pits, where it was halted and rallied. After collecting, by his own efforts and those of his officers, as many men as possible, the accused deployed them as skirmishers, and the fire having meanwhile nearly ceased, ordered them forward, and reestablished his picket line as before.

It is testified that within half an hour from the time of the retreat, the whole line was again established in its former position.

It was charged upon the accused that he should have ordered the right of the line to be rallied as soon as he learned that it was giving way, and then should have held the entire line to its position; that in ordering a retreat under the circumstances, and thus uncovering the entrenchments and troops of the main army, he was guilty of abandoning his post and of cowardly behavior in the presence of the enemy.

It is to be remarked that Captain Burleigh has himself been cashiered by sentence of court-martial for allowing his part of the line to retreat without exerting himself to rally and hold it firm, and it is apparent that it was the dereliction of duty on the part of this officer which was the occasion of the general retreat.

It is probable that if the accused and all his officers had been awake and upon or near the line at the moment of the attack, the panic among the men might have been quieted and no retreat have taken place; but under the circumstances of the unusual fatigue to which they had been subjected it is not to be wondered at that, in the absence of any immediate appearance of danger, no more than ordinary vigilance was used. Indeed, the fact that the accused was asleep at the moment of the firing is not charged in the specifications as a reprehensible proceeding. It is his neglect to maintain his line and his ordering a retreat which are indicated as the acts constituting his offense.

There is no doubt that this retreat was ordered by the accused in a moment of trepidation, and was an unmilitary act; at the same time the fact that he halted and collected his men at the first rallying point at the rear, and, as soon as possible, reestablished his former line, goes to show that his confusion was but temporary, and indicates not so much that he was guilty of cowardice as that he was unequal at the moment to the circumstances of danger and difficulty in which he found himself placed. It is to be observed that he had no picket reserve, and it does not appear that he had received any special orders or instructions before taking the command. It is also to be remarked that Captain Daniels, the division officer of the day, under whose direction the accused would seem to have been, testifies his general approval of the conduct of the latter on the occasion in question, in saying: "So far as I saw it, I could enter no complaint against it. When I was there in the evening he was discharging his duties. When I found him [at night] he had a line of skirmishers ready to advance to the old position."

The accused has now presented for the consideration of the Executive a large number of testimonials in regard to his bravery and efficiency as an officer, and to his high character as a citizen. The former are signed by Colonel Bell, Lieutenant-Colonel Drew, Lieutenant-Colonel Sleeper, Captain Wallace, and other line officers,

all now or lately connected with his regiment. His bravery at the battle of Pocatigo, where he made a gallant and successful charge with his company upon a battery, and his courage and efficient services at Morris and Folly islands, and in the attack upon Fort Wagner are particularly specified. Colonel Bell expresses the opinion that "personal fear had nothing to do with his movements" on the occasion which has been detailed. It is remarked by Lieutenant-Colonel Drew that the accused was particularly active in causing his company to reenlist as veteran volunteers.

Hons. Daniel Clark, I. W. Patterson, E. H. Rollins, and a number of other prominent citizens of New Hampshire, commend his case as that of a worthy and loyal citizen, and the first named expresses his belief that the governor of that State will recommission him if allowed to do so. This may also be inferred from the fact that the governor, the secretary of state, and the members of the executive council join in a communication to the President, in which they urge that the case may receive the favorable attention of his excellency.

The comments which have been made upon the testimony in the record will indicate that, in the opinion of this Bureau, the offense of Captain Badger was not so grave a one as the language of the specifications would imply. Whether, in view of the previous character of the accused as a soldier and of the unusual interest which is taken in his behalf by parties of high official position, it will be deemed for the public interest to remove the disability imposed by his sentence and thus afford him an opportunity to reenter the service under a new commission, must remain for the President to determine.

Respectfully submitted.

J. HOLT, *Judge-Advocate-General.*

[Indorsement.]

Disability removed and forfeiture of pay and allowances rescinded.

JANUARY 14, 1865.

A. LINCOLN.

GENERAL COURT-MARTIAL ORDERS, }

No. 20. }

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, January 21, 1865.

In the case of Capt. William Badger, Company D, Fourth New Hampshire Volunteers, sentenced by court-martial "to be cashiered, and to forfeit to the United States all pay and allowances that are or may become due him at the promulgation of this sentence," as promulgated in General Orders, No. 73, headquarters Department of Virginia and North Carolina, of June 4, 1864, so much of the sentence as imposes a forfeiture of pay and allowances is hereby rescinded, and the disability imposed by sentence is removed, so far as to allow his return to the service under a new commission.

By order of the President of the United States:

E. D. TOWNSEND,
Assistant Adjutant-General.

CAMP SIXTH INFANTRY,
Whiteriver, Colo., September 10, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of August 29 in reference to the case of Captain Burleigh, of the Fourth New Hampshire Volunteers. I am glad that his old military friends are taking measures to have his volunteer record made right, as I know it is all wrong now. On the evening of May 21, 1864, while a part of the force at or near Bermuda Hundred, Va., I was ordered on picket in command of the Fourth New Hampshire Volunteers, being the senior officer present for duty, and relieved two other regiments on what afterwards proved to be a very badly selected and almost untenable line. The next night we should have been relieved, but by someone's blunder were left over another twenty-four hours, without rations or any certain way to obtain any. Early that morning our line was attacked with small arms, and the men stood their ground well. The second evening at about 11 p. m. our line was shelled very vigorously by a flanking fire from our left, as we were on two sides of an angle, and thus exposed. The effect of the shots, as shown in my trial, was terrific, cutting off trees and branches of large size. The men scattered. Captain Burleigh, who was very active, and on whom I always relied for coolness and good judgment, reported to me that his part of the line was breaking and falling back. Upon the strength of his report, and what I could see, I ordered the line to fall back, reducing the two sides of the triangle to the third side, the base, where there was a small ditch and the original line, and then I caused the skirmish line to be re-formed, and by degrees recovered our former position without

losing any men. Had I held what men I could on the line, even if many were killed and the others captured, I would have been called brave, or perhaps the fight would not have been even reported at all.

The field officer of the day, Capt. L. H. Daniels, Thirteenth Maryland Volunteers, came along at that time, and when a witness in my case was asked, "What was the conduct of Captain Badger so far as you saw it?"—Answer. So far as I saw it I could enter no complaint against it. When I was there in the evening he was discharging his duties. When I found him he had a line of skirmishers formed ready to advance to the old position."

I took my regiment to camp when relieved next evening, and on the 24th and 25th myself and Captain Burleigh were ordered before a court and tried, chiefly for misdemeanor before the enemy, and very unexpectedly to ourselves and friends were sentenced to be "cashiered," which sentence was approved by the general commanding, and in those days had to go no further. We and our friends relied entirely on the testimony produced, making no special effort in defense, feeling sure that we had done as well and all we could, and would be honorably acquitted.

I had my case reviewed by Judge-Advocate-General Holt and late President Lincoln, personally appearing before them and stating my own case. On or about the 14th of January, 1865, an order was published relieving me entirely from the effect of that court-martial; and February 21, 1865, I was appointed colonel of the Fourth New Hampshire Volunteers, and took the oath of office February 22, 1865. June 9, 1865, I was appointed by the President a captain in First Veteran Corps (Hancock's), and from that date my record may be found in the United States Army Register.

Captain Burleigh was not to blame for any act whatever. He obeyed my orders and caused others to do so as well as he could and ought not to have been tried more than all officers under my command at that time. The President told Hon. Daniel Clarke that he had read my case carefully and was satisfied that I did the best I could under the circumstances. This should clear Captain Burleigh, as he only did his duty and carried out my instructions. He ought to have gone to Washington when I did, but was unable to bear the expense; and too much disgusted with the court that carelessly—as others think who have read the testimony—ruined an innocent man, and he declined to make an appeal.

I hope all necessary steps will be taken that a proper act be passed at next session of Congress to restore him and honorably complete his record; not because time has changed the case, but that the first decision was hasty and wrong and a blameless man and his family received an irreparable injury while risking life and everything for his country.

Very respectfully,

WM. BADGER,
First Lieutenant Sixth Infantry and Brevet Captain, United States Army.

Col. THOS. J. WHIPPLE,
Chairman of a Committee of the G. A. R. of New Hampshire,
and late Colonel Fourth New Hampshire Volunteers.

WAR DEPARTMENT,
Washington, D. C., January 30, 1883.

SIR: Application having been made to this Department by Hon. H. W. Blair, United States Senate, that the stigma resting upon your military record through your having been cashiered June 4, 1864, by sentence of general court-martial, a thorough investigation has been had of the circumstances which led to your trial, in the light of evidence which has since been known, and the conclusion reached that an injustice was done you. It is to be regretted that an expression of the views of this Department in the premises is all the relief that can, at this time, be legally afforded you.

The court before which you were tried and convicted was a properly constituted court, having full jurisdiction of the case, and its proceedings having been approved and the sentence adjudged fully executed, there is nothing left upon which remission could take effect, the organization from which you were dismissed having ceased to exist.

Trusting that the views of this Department, as herein expressed, may serve in a manner to relieve you from the undeserved stain upon your otherwise soldierly record,

I am, very respectfully, your obedient servant,

ROBERT T. LINCOLN,
Secretary of War.

Capt. D. O. BURLEIGH,
Laconia, N. H.